SEVERAL PROBLEMS OF GRAY'S RULE AGAINST PERPETUITIES, SECOND EDITION.

GRAY'S Rule against Perpetuities is entitled to more attention than is usually given it by the mere reviewer. Its discussion of problems in the law of future interests is, it is believed, such as to call for articles dealing in some detail with the learned author's treatment of particular topics.[1]

VESTED AND CONTINGENT REMAINDERS.

It is believed that Professor Gray's exposition of the distinction between vested and contingent remainders[2] is capable of some further development.

We are told in § 100 that "the word 'vested' had originally no reference to the absence of contingency." This indicates at once that vested remainders must include remainders which are not subject to a condition precedent and some that are; while contingent remainders include only a portion of those which are subject to a condition precedent. Then in § 101 we are brought face to face with this definition of a vested remainder: "A remainder is vested in A, when throughout its continuance A, or A and his heirs, have the right to the immediate possession whenever and however the preceding estates may determine." What is the reason for this definition? Surely it is not supportable from any purely modern point of view. Is its origin to be referred, then, to the feudal system of land law? It is submitted that Mr. Gray might at least have hinted at the answer to this question and suggested the reason upon which his definition was based.

Having started, however, in this somewhat abrupt fashion, the learned author seems to fall away from his own premises. In § 104 he puts the case of a gift "to A for life, remainder to B and his heirs, but if B dies before the termination of the particular estate, then to C and his heirs." Of course the remainder to B is, by his definition, vested, though actually subject to a condition

[1] Upon the appearance of the first edition a very considerable discussion arose in one of the leading English Reviews over the question whether possibilities of reverter had been held to exist after the Statute of *Quia Emptores*. See 3 L. Quar. Rev. 399.

[2] §§ 100–108.

precedent to its taking effect in possession. B and his heirs stand ready at all times during the continuance of B's interest — that is, so long as there is any chance of its ever taking effect in possession — to come into possession whenever and however the preceding interest determines. Yet in § 105 the learned author intimates that "if the law looked on vested and contingent interests with an impartial eye, it would seem that such remainders should be held contingent. . . . But the preference of the law for vested interests has prevented this view being adopted." This is confusing. If he means that from the modern point of view the remainder ought to be held contingent, he is correct; but his original hypothesis is that the distinction between vested and contingent remainders is not a rational one from the purely modern point of view. The statement that the preference of the law for vested interests makes it vested, implies that it is held vested as the illogical relaxation of a general rule by which it would be contingent; whereas the fact is that the result is according to the general rule of law (doubtless of feudal origin), and is no doubt entirely consistent with the principles and reasoning upon which that rule was founded, — whatever they may be.

In §§ 106 and 108 Mr. Gray does not make clear the application of the definition of a vested remainder which he announces. In § 106 he puts the case of a devise "to A for life, remainder to his surviving children," and deplores the rule of some cases in Illinois and other states, which he says would make this remainder to the surviving children of A vested. He fails to observe that the children take a vested interest or not, by the application of his own definition, according as you construe the testator's meaning to be that the children shall literally survive A, or that they shall survive the termination of A's life estate, no matter how or when it may determine. If you accept the latter meaning, then the remainder is ready throughout its continuance (for it has a continuance so long as there is a possibility that it may take effect in possession) whenever and however the preceding estate determines. The fault of a case which held the remainder vested in the children of A in the above case would not necessarily be that it changed the definition of a vested remainder. It might be that it only departed from the construction of a contingency which generations of judges have clung to and approved.

In § 108 the learned author does not seem to stand by his definition of a vested remainder. He there announces the test by which

it is to be determined when a remainder which is subject to a condition precedent to its ever taking effect in possession is to be regarded as vested or contingent. He says it all depends upon the form of the language used. "If the conditional element is incorporated into the description of, or into the gift to, the remainderman, then the remainder is contingent; but if, after words giving a vested interest, a clause is added divesting it, the remainder is vested. Thus, on a devise to A for life, remainder to his children, but if any child dies in the lifetime of A his share to go to those who survive, the share of each child is vested, subject to be divested by its death. But on a devise to A for life, remainder to such of his children as survive him, the remainder is contingent." One may fairly ask why the learned author makes the test the mere form of words, when his own definition furnishes a sufficient foundation for the distinction which he wishes to draw. In the first case put, the remainder to the children of A is vested, because clearly enough during its continuance — that is, so long as it has a chance of taking effect at all — it stands ready to come into possession whenever and however the preceding estate may determine. So in the second case put, if the gift to the children of A who survive him be construed as a gift to the children of A who survive the termination of A's life estate, whenever and in whatever manner it may occur, it is no different in substance from the first case, and should, according to Mr. Gray's definition, be a vested remainder. The proper construction, however, of the limitations to the surviving children of A in the second case is that they must literally survive A's death. In such case Mr. Gray's definition of a vested remainder will not apply, and the remainder is contingent.

Mr. Gray states in §§ 106 and 107 the New York statutory definition of a vested remainder. He indicates also some cases where apart from statute that definition seems to have been adopted. He fails, however, to make the discrimination that in some of these where results were actually reached different from those which would have been obtained by applying the common law, the only question was whether the remainder was alienable by deed without covenants. This is most strikingly true of the leading case in Illinois, Boatman *v.* Boatman.[1] This definition

[1] 198 Ill. 414. See also *In re* Haslett, 116 Fed. Rep. 680; Forsythe *v.* Lansing, 109 Ky. 518. So in Chapin *v.* Nott, 203 Ill. 341, the question was whether a remainder subject to a condition precedent that the life tenant die without issue, could descend upon the death of the remainderman. Clearly it could by the common law. The court,

of a vested remainder may therefore be merely an indirect way of causing, without the aid of statute, contingent remainders to be alienable *inter vivos*, — a most enlightened piece of law reform. These cases perhaps should be regarded as establishing only the proposition that a future interest after a particular estate of freehold limited to a person ready and entitled to take possession as remainderman should the particular estate then determine, — although, should the particular estate determine at some other time, such person might not be entitled to the remainder, — is alienable by deed without covenants. Mr. Gray's explanation entirely fails to bring this out, and the reader therefore is left, it is submitted, in far worse confusion than need be.

Cases may be found in Illinois where remainders which are vested according to the common law definition as set out in Gray's Rule against Perpetuities and by the New York statutory definition as well, are called contingent because they are subject to a condition precedent in fact. Thus, where the question is as to whether the holder of a future interest may file a bill for partition, the rule is that he cannot unless his future interest is absolutely sure to take effect in possession some time. If it is uncertain ever to take effect, no partition may be had. This rule is discussed in terms of vested and contingent remainders. Accordingly, where the limitations are to A for life, remainder to B and his heirs, but if B dies before the termination of the particular estate, then to C and his heirs, we find the court, for the purpose of determining whether B's interest is subject to partition or not, calling B's interest a contingent remainder.[1]

---

however, held that it descended because the remainder was vested under the doctrine of the Boatman case.

It should be observed, also, that the New York case of Moore *v.* Littel, 41 N. Y. 66, which seems to have established, by virtue of the New York statute, this new definition of a vested remainder, raised only the question of whether the future interest was alienable *inter vivos* or not. The New York court held it was, because under the New York statute it was vested. This, it has been pointed out by Mr. Stewart Chaplin (1 Colum. L. Rev. 279), was the precise point involved in many cases which have cited or followed Moore *v.* Littel, *supra*. It may be, therefore, that the true function of the New York statute is indirectly to allow the transfer of all future interests so long as they fulfill the statutory definition of a vested interest. It should be treated, perhaps, as an indirect mode of abolishing all the irrational and absurd results which have come down to us from the feudal period of the land laws and have attached to interests known at common law as contingent remainders, — namely, their non-alienability and possibly their destructibility.

[1] Seymour *v.* Bowles, 172 Ill. 521; Goodrich *v.* Goodrich, 219 Ill. 426, 1 Ill. L. Rev. 184; Ruddell *v.* Wren, 208 Ill. 508; Cummings *v.* Hamilton, 220 Ill. 480, 483, *semble*.

In short, it is believed that looking at it from the point of view of vested and contingent interests, the law in single jurisdictions may, as it does in Illinois, appear a perfect chaos. No order can come out of it unless one starts with the premise that fundamentally there was a common law or feudal distinction between vested and contingent remainders; that this was and may still be useful in connection with certain results; that in connection with other results the mere distinction in words may take on an entirely different character in substance.

The vital question, however, for the writer on the subject of the rule against perpetuities concerns the proper definition of a vested interest to be used where the application of the rule against perpetuities is involved. Is a state having a non-statutory rule against perpetuities, but adopting the New York statutory definition of a vested interest when the question is one of alienation *inter vivos*, going to apply that definition where the question is whether the rule against perpetuities is violated? Thus, suppose a limitation to A for life, and if A die without issue in any generation to B and his heirs. A is a bachelor. We will assume, also, that contingent remainders are no longer destructible. Under the New York statutory definition B would have a vested remainder.[1] Is his interest therefore not void for remoteness?[2] Is a state like Illinois, which has a rule that the future interest is vested for the purpose of involuntary partition only when it is not subject to a condition precedent in fact — *i. e.*, when it is absolutely sure some time to come into possession — going to apply that definition when the question is whether the rule against perpetuities is violated? If so, it may make a difference in a case like this: to A

[1] Chapin *v.* Nott, 203 Ill. 341.

[2] It is assumed in accordance with the reasoning of some recent cases abolishing the Rule in Wilde's Case, 6 Co. 17 (Davis *v.* Ripley, 194 Ill. 399; Boehm *v.* Baldwin, 221 Ill. 59), that the gift after an indefinite failure of issue in the life tenant does not turn the life estate into an estate tail, where estates tail have been long since abolished by statute and turned into life estates with remainders in fee to the life tenants' lineal heirs.

Observe, also, that the case put in the text exists in Illinois where an estate tail is limited to A and the heirs of his body, and the remainder in fee to B and his heirs. In such a case the Statute on Entails (Rev. Stat. 1874, c. 30, § 6) gives A a life estate with a remainder to his lineal heirs. B would, it is submitted, have a fee simple taking effect on the contingency of an indefinite failure of issue in the life tenant. See Chapin *v.* Nott, 203 Ill. 341; Growt *v.* Townsend, 2 Hill (N. Y.) 554, 2 Den. (N. Y.) 336.

It should be noted that Missouri (Rev. Stat. 1899, § 4592), Arkansas (A. & H. Dig. Stat. 1894, c. 29, § 700), Vermont (Stat. 1894, c. 105, § 2201), and Colorado (Mill's Ann. Stat., vol. 1, § 432) have a statute on entails similar to that in Illinois.

for life, then to the unborn son of A for life, remainder to B and his heirs, but if B or his issue do not survive the termination of the unborn son's life estate, then to C for life. Here the remainder to B is in fact subject to a condition precedent to its taking effect in possession, which may occur at too remote a time. If, therefore, it be regarded as not vested and the rule be held to apply, the remainder to B will be void for remoteness, and under Moneypenny *v.* Dering [1] C's life estate will fail. These fundamental difficulties the learned author of the Rule against Perpetuities fails even to open to our view.

VESTED AND CONTINGENT INTERESTS AFTER TERMS FOR YEARS.

When is a freehold interest limited after a term vested? This is a vital question, because, as is pointed out in §§ 209 and 210, however long the term may be, the limitation after it is valid if vested. It is believed, therefore, to be a serious omission in the chapter on vested and contingent interests that this question is not discussed. In fact, in no place in the book is it considered.

Shall we assume, then, that a freehold interest after a term is vested when such a future interest after a freehold would be? If so, the freehold after the term is vested in A, when throughout its continuance A, or A and his heirs, have the right to the immediate possession whenever and however the preceding term may determine. Such a view certainly is consistent with Smith d. Dormer *v.* Parkhurst.[2] If this be the correct view, then we may have interests after a very long term for years which are in fact subject to a condition precedent to taking effect in possession, but which must be called vested. Are they, then, not subject to the rule against perpetuities? Thus, to A for ninety-nine years and then to B and his heirs, but if neither B nor any of his lineal descendants from him survive the termination of said term, then to C for life. Here B's interest is in fact subject to a condition precedent to its ever taking effect in possession. Is it then vested and not too remote? Where Moneypenny *v.* Dering [3] is law, on the answer to this question will depend the validity of the gift to C for life. So, if

---

[1] 2 DeG. M. & G. 145.

[2] 3 Atk. 135; 5 Gray, Cas. on Property, 55; Fearne, C. R., 220; Challis, Real Property, 2 ed., 133–136.

[3] *Supra.*

the limitations are to A for ninety-nine years and then to B and his heirs, but if the said term shall terminate before the expiration of said ninety-nine years, then to C and his heirs, is C's interest too remote?

STATEMENT OF THE RULE AGAINST PERPETUITIES.

In the first edition the rule against perpetuities was given in this form: "No interest subject to a condition precedent shall be good, unless the condition must be fulfilled, if at all, within twenty-one years after some life in being at the creation of the interest." As Mr. Gray now, in the second edition, points out, this is only correct "if we assume that 'condition' includes not only all uncertain future acts and events, but also all certain future events with the exception of the termination of preceding estates." By this assumption the rule as stated applies to certain executory interests, — as where the limitations are to A and his heirs to begin from a day fifty years after the testator's death. Even then, however, the statement of the rule is believed to be defective, because there may be some future interests which are in fact subject to a condition precedent in the sense of an uncertain future act or event, which would not be too remote because by the common law definition they were *vested*. Thus, suppose the limitations are to A for life, then to the unborn son of A for life, remainder to B and his heirs, but if B or his issue do not survive the termination of the life estate in the unborn son, then to C for life. Here the remainder in B is, by the common law definition, vested,[1] yet it is in fact subject to a condition precedent to its taking effect in possession which may occur at too remote a time. Nevertheless, because the future interest is vested it may be supposed that it is not void for remoteness.

The fact that with respect to future interests there are today several distinct meanings of the term "vested" variant from that which obtained at common law, suggests a criticism of the statement of the rule as now set out in the second edition. In that statement the future interest is required to "vest" within the required time. With at least three different meanings of "vest,"[2] all of which are in use in a state like Illinois, and doubtless in other jurisdictions to some extent, how can such a statement of the rule against perpetuities be of the slightest value until the

[1] Gray, Rule Perp., 2 ed., § 108.

[2] See *supra*, pp. 192–195.

sense in which "vest" be used is defined. However it might be with the casual reader, it would not, it is believed, be difficult for one having a more intimate acquaintance with the scope of Mr. Gray's book to surmise that by "vest" the learned author means "take effect in possession," or "come into a position with reference to a preceding estate less than an absolute interest where the future interest is ready, during its continuance, to come into possession whenever and however the preceding interest determines, otherwise than by being prematurely cut short by the express provision of the settlor." Curiously enough, this is just the definition of "vest" which is no longer much understood and which is ceasing to be in common use. Why not, then, discard the word "vest" and state the rule thus: No interest is good unless it must come into possession, if at all, not later than twenty-one years after some life in being at the creation of the interest; except that if the interest, whether in real or personal property or by way of equitable interest in real or personal property, must, if at all, not later than twenty-one years after some life in being at the creation of the interest, stand ready throughout its continuance to come into immediate possession, whenever and however a preceding interest less than an absolute interest may determine, otherwise than by being prematurely cut short by the express provision of the settlor, it is valid.

DOES THE RULE APPLY TO CONTINGENT REMAINDERS?

There is another problem that the critical reader may well ask for more light upon. It is stated, as we have just seen, to be one of the fundamental assumptions that the rule against perpetuities does not apply to remainders which are vested in interest, no matter at how remote a time they may vest in possession.[1] Yet, as to all future interests in land which are executory, they must vest in possession within the prescribed time, — or, as it is often stated, they do not vest in interest until they vest in possession. Why is this? One searches in vain in the present edition, as well as in the first, for an answer. The truth is that Mr. Gray may have placed himself in a position where it is difficult for him to argue about this matter. He has taken the position that a contingent remainder is subject to the rule. The main affirmative ground for this, he states[2]

[1] §§ 205 *et seq.*

[2] § 284.

to be that, "as the rule governs all contingent equitable limitations of real estate, and all contingent limitations, legal and equitable, of personal property, whether in the form of remainders or not, it is very desirable that legal contingent remainders of real estate should be subjected to the rule also." Suppose, then, the limitations are to A for life, then to the unborn son of A for life, remainder to B and his heirs, but if B or his issue do not survive the termination of the unborn son's life estate, then to C for life. Here the remainder in B is by the common law definition vested, yet it is in fact subject to a condition precedent to its taking effect in possession which may occur at too remote a time. It is a future interest which is both vested and contingent. Does the rule apply? If it does, then under Moneypenny *v.* Dering[1] C's life estate will fail. If it does not, then C's life estate is valid. If the reason why the rule applies to contingent remainders be sound, then the same reason will cause it to apply to vested remainders which are in fact subject to a condition precedent, and the learned author should have given us some further exposition of the vested remainders which are subject to the rule against perpetuities and those which are not. The fair inference is that he would say that the rule would not apply to the vested remainder in the case put, simply because it was vested. The only distinction, however, between the vested-contingent remainder and an executory interest is the purely historical one, that by the common law or feudal system of land law the future interest of the vested-contingent remainder type was valid and recognized as such long before any rule against perpetuities arose. That is the *accident* which caused the rule not to apply. Whether this reasoning be progressive or unprogressive, logical or illogical, it is exactly the same reasoning, exactly the same accident, which enables one to say that the rule against perpetuities does not apply to contingent remainders. It is believed, therefore, that the learned author's statement that the rule does not apply to vested remainders and that it does apply to legal contingent remainders, while in a sense, perhaps, correct, since contingent remainders have become indestructible, is susceptible of some further elucidation.

---

[1] 2 De G. M. & G. 145.

VESTED GIFTS TO A CLASS AND THE RULE AGAINST PERPETUITIES.

In § 121 b is supposed the case of an immediate vested bequest to the grandchildren of A, a living person, to be paid them at twenty-five. A has one grandchild *in esse* at the testator's death, who is three years old. Is there a valid gift to that grandchild? The learned author answers this question in the affirmative, but upon what ground is still far from clear.

The actual language used to explain the result was this: "Here the number of the class may not be determined till too remote a period, the rule against perpetuities will be violated, and the gift to a class which may be so constituted will be bad; there is, then, no reason for sustaining the direction to postpone in the interest of increasing the class, and the provision [for postponement] is inoperative." This language on its face seems an indefensible violation of the rule of § 629 that "every provision in a will or settlement is to be construed as if the rule did not exist, and then to the provision so construed the rule is to be remorselessly applied." Whatever the character of the rules in regard to the determination of classes may be, they are certainly applied remorselessly without any reference to whether such application will cause the gift to be void for remoteness or not. There is no more reason in the case under consideration for changing the usual rule for the determination of classes, because otherwise the whole gift would be void for remoteness, than there was in Leake *v.* Robinson.[1]

It seemed so improbable that Mr. Gray had really meant what he appeared to say that the writer was driven to invent some other meaning for this language. He conceived that what the learned author meant was that there were two separately expressed gifts, — one to the grandchildren of A *in esse* at the testator's death, by the words "to the grandchildren of A," and the other to the after-born grandchildren of A, by the words "to be paid at twenty-five"; — that the latter being too remote, but separable, may be rejected, leaving the gift to the grandchildren of A to stand. This view seemed to receive some confirmation from what appeared in § 442 a. This explanation the learned author has now so warmly condemned that it hardly seems open to further consideration.[2]

This leaves in support of Mr. Gray's conclusion only the sugges-

[1] 2 Meriv. 363.

[2] 19 HARV. L. REV. 604.

tion that the postponement clause is void, not because it violates the rule against perpetuities, but because it attempts the creation of an indestructible trust which may last too long a time, so that by the rejection of that clause as void we have a straight gift to the grandchildren of A.[1] Whether the learned author accepts this or not I do not venture to say.

On the whole, then, Mr. Gray's solution of the problem under discussion seems to rest only upon the reasoning adduced by one of his recent pupils, which in turn rests upon a principle never judicially applied in any case and only hinted at in cases like Claflin *v.* Claflin[2] where there was a gift to an individual and not to a class. Somehow one does not accord to the writer of a book so much latitude in promulgating new results without good reasons, as a court, which has to decide whether it wants to or not, is indulged in.

POSTPONED ENJOYMENT CLAUSES VOID APART FROM THE RULE AGAINST PERPETUITIES.

Mr. Gray concedes that the postponed enjoyment of a vested and indefeasible equitable interest is valid everywhere if the gift is to a class.[3] If the gift is to an individual, it is valid only in Massachusetts and perhaps Illinois, under what is now known as the rule of Claflin *v.* Claflin.[4] In §§ 121 h and 121 i he suggests, however, that there must be some limits to the length of time the postponement will be allowed to continue, and the time in the future that it will be allowed to operate. In a note in a recent number of the HARVARD LAW REVIEW[5] he admits that (in accordance with the language of several cases[6]) the period will very likely be copied from that adopted for the rule against perpetuities, — that is to say, a life or lives in being and twenty-one years. He seems to think, however, that there is still a question as to whether the period of a life or lives in being and twenty-one years will begin to run from the time the trust is created or from the time the postponement

---

[1] 19 HARV. L. REV. 598, 602–604.

[2] 149 Mass. 19.

[3] Oppenheim *v.* Henry, 10 Hare 449; Gray, Rule Perp., 2 ed., § 121 a.

[4] 149 Mass. 19; Lunt *v.* Lunt, 108 Ill. 307; Gray, Rule Perp., 2 ed., § 121 c.

[5] Vol. 19, p. 604.

[6] Sadler *v.* Pratt, 5 Sim. 632; Jackson *v.* Marjoribanks, 12 Sim. 93; Shallcross's Estate, 200 Pa. St. 122; Winsor *v.* Mills, 157 Mass. 362; Kohtz *v.* Eldred, 208 Ill. 60, 72. In Kentucky there is a statutory provision to the same effect: Ky. Stat. 1903, § 2360; Johnson's Trustee *v.* Johnson, 79 S. W. Rep. 293 (Ky., 1904).

begins to operate. He even ventures an ambulatory guess (that is, I suppose, one subject to be revoked) that it will be the latter. Thus, suppose a legacy be devised to the first-born son of A, a bachelor, contingent upon his reaching the age of twenty-one, but with a proviso that the legacy is not to be paid to him until twenty-one years after he reaches the age of twenty-one. Here, if the time at which the postponement will be effective be measured from the testator's death, it is void *in toto*, but if it be calculated from the time the postponement commences to operate, it is valid.[1]

If Mr. Gray were deciding the question instead of guessing about it, there ought to be but little doubt as to what result he would choose. One who has expressed such abhorrence of the whole doctrine of Claflin *v.* Claflin as he has, would certainly be expected to choose the shorter period for the existence of the postponement. It is difficult to see upon what ground any other result could be reached.

Such authority as exists is in favor of the shorter period. Thus, the English cases which have had to deal with the time within which clauses against anticipation of a married woman's property must be operative to be valid, have settled it that the clause against anticipation is wholly void if it may possibly be in operation at a period beyond a life or lives in being and twenty-one years from the time of the testator's death or the date of the settlement. In the case of *In re* Ridley[2] the limitations were in substance to A for life and then to A's children living at her death, and the issue of any child then dead in equal shares *per stirpes*. Then there was the general clause that any legatees being females were to take their shares subject to a clause against anticipation. It is clear that the gift after the life estate vested in time, — namely, at A's death. If, then, the validity of the clause against anticipation be determined by reckoning the life or lives

[1] It should be observed that the case put by Mr. Gray in his note in 19 HARV. L. REV. 604 to raise this question, does not do it. He supposes in a Claflin state that a legacy is given "to the first-born son of A to be paid him when he reaches twenty-five," A being at present a bachelor. Under both views the postponement in such a case would last too long and therefore be void. If you measure the postponement from the time of the death of the testator, it will clearly last too long, but it will equally do so if you measure the length of time the postponement is to last from the beginning of the unborn child's interest — that is, from the moment of his birth, — because the time of payment comes, as Mr. Gray himself asserts (Rule Perp., 2 ed., § 121 b), not when the child reaches twenty-five or dies, whichever happens first, but when he would have reached, had he lived, the age of twenty-five.

[2] 11 Ch. D. 645.

in being and twenty-one years from the time the future interest vested, it must have been valid, because it would be operative only during lives in being from the time of vesting of the interests after the life estate. It was held void, however, because it might be effective at a time beyond a life or lives in being and twenty-one years from the testator's death.

It is submitted that sound public policy requires such a result. So long as the rule against perpetuities compels future interests to take effect in possession or to vest (in the feudal sense of that term) not later than twenty-one years after some life in being at the creation of the interest, it would seem inconvenient to allow trusts of interests which vest in time to be continued far beyond that period. The public policy of which the rule against perpetuities is in part an expression, is that the testator or settlor's control over his property shall cease at least at the end of a period of a life in being and twenty-one years from the death of the testator or the date of the settlement. To allow him to create an indestructible trust to last during a life or lives in being and twenty-one years after a life or lives in being and twenty-one years, will not, it is submitted, be tolerated.

Albert Martin Kales.

NORTHWESTERN UNIVERSITY LAW SCHOOL.